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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,677	09/23/2003	Jamie Hogan	HOGAN.001A	5544

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EXAMINER

NGO, LIEN M

ART UNIT PAPER NUMBER

3754

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/669,677	HOGAN, JAMIE	
	Examiner	Art Unit	
	LIEN TM NGO	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 19-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 19-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/10/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 3 is enabling because claim 2 recite no any gap (eliminate any gap), but claim 3, which depends on claim 2, recites "said gap".

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 24, "said moisture" lacks antecedent basis.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-13 and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Opresco (5,462,182). Opresco discloses, in figs. 1 and 2, apparatus comprising a body 10, a thread cap 50 having at least one locking element 70, the cap comprising a lower edge 66 matting with a surface of ridge 30 disposed on the body for substantially denying access to a gap between the lid and body. The cap is configured to be removed with two hands.

The statements of intended use of "bear excluding", "action of a human", etc. have been carefully considered, but deemed not to impose any structural limitations on the claims distinguishable over the Opresco invention. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to employ does not differentiate the claimed apparatus from the prior art apparatus satisfying the claimed structure limitations. Ex Parte Masham, 2 USPQ 2d 1647 (1987).

In regard to claim 5, Opresco discloses, in fig. 5, the cross-section of the container body and the cap made from plastic. Nylon is a polycarbonate and plastic is a rigid, flexible polymer or a polycarbonate being well known in the art.

6. Claims 1-13 and 19-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Stull (4, 298,129). Stull discloses, in figs. 1 and 5, apparatus comprising a body 26 having an aperture being nearly the full diameter of the body, a thread cap 30 having at least one locking element 38, the cap comprising a lower edge 42 matting with a

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surface of ridge 24 disposed on the body for substantially denying access to a gap between the lid and body. The cap is configured to be removed with two hands.

The statements of intended use of "bear excluding", "action of a human", etc. have been carefully considered, but deemed not to impose any structural limitations on the claims distinguishable over the Stull invention. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to employ does not differentiate the claimed apparatus from the prior art apparatus satisfying the claimed structure limitations. Ex Parte Masham, 2 USPQ 2d 1647 (1987).

In regard to claim 5, 10 13, 21, Stull discloses, in fig. 1, the cross-section of the container body and the cap made from plastic. Nylon is a polycarbonate and plastic is a rigid, flexible polymer or a polycarbonate being well known in the art.

7. Claims 1-13 and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Bilani et al. (6,036,036). Bilani et al. disclose, in figs. 2, an apparatus comprising a body 110, a thread cap 120 having at least one locking element 131, the cap comprising a lower edge 128 matting substantially flush with a surface of ridge 130 disposed on the body for substantially denying access to a gap between the lid and body by an animal. The cap is capable of to be removed with to hands (see the abstract)

The statements of intended use of "bear excluding", "action of a human", etc. have been carefully considered, but deemed not to impose any structural limitations on the claims distinguishable over the Bilani invention. It has been

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held that a recitation with respect to the manner in which a claimed apparatus is intended to employ does not differentiate the claimed apparatus from the prior art apparatus satisfying the claimed structure limitations. Ex Parte Masham, 2 USPQ 2d 1647 (1987).

In regard to claim 5, 10 13 and 21, Stull discloses, in col.4, lines 38-53, and col. 12, lines 28-36, the container body and the cap made from plastic. Nylon is a polycarbonate and plastic is a rigid, flexible polymer or a polycarbonate being well known in the art.

8. Claims 1, 2, 5, 8, 12, 13, 21-23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Rumble (3,782,547). Rumble discloses, in figs. 2-3, 8 and 9, an apparatus comprising a body 13, 35, a thread cap 10, 30 having at least one locking element 18, 39, the cap comprising a lower edge 15 matting substantially flush with a surface disposed on the body for substantially denying access to a gap between the lid and body by an animal (see fig. 1 and 3). The cap is removed with to hands. The body comprises a plurality of surface elements 38 to provide retention of a retaining device (see figs. 8 and 9)

The statements of intended use of "bear excluding", "action of a human", etc. have been carefully considered, but deemed not to impose any structural limitations on the claims distinguishable over the Rumble invention. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to employ does not differentiate the claimed apparatus from the prior art

apparatus satisfying the claimed structure limitations. Ex Parte Masham, 2 USPQ 2d 1647 (1987).

In regard to claim 5, 13 and 21, Rumble discloses, in col.2, lines 29-35, the container body and the cap made from plastic. Nylon is a polycarbonate and plastic is a rigid, flexible polymer or a polycarbonate being well known in the art.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 5, 10 13 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over prior art references applied above.

To the degree it can be argued that the references applied above do not disclose the container body and the cap made from material as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container body and the cap in the references applied from material as claimed, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Response to Arguments

11. Applicant's arguments filed 8/10/05 have been fully considered but they are not persuasive as pointed out in the rejections above.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL MAR can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO
Primary Examiner
Art Unit 3754

October 23, 2005

